**APPENDIX**

No. 07-97-0263-CR

IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO

PANEL B

February 23, 1998

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RONALD JACKSON,

*Appellant*

v.

THE STATE OF TEXAS,

*Appellee*

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From the 290th District Court of Bexar County;
No. 96CR2576; Honorable Sharon MacRae, Judge

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Before BOYD, C.J., and DODSON and QUINN, JJ.

Ronald Jackson, appeals from a judgment convicting him of intoxication manslaughter under § 49.08 of the Texas Penal Code. His sole point of error involves whether the trial court erred in refusing to dismiss the prosecution since the State allegedly failed to timely indict him under article 32.01 of the Texas Code of Criminal Procedure. We affirm.[1]

According to article 32.01 of the Code of Criminal Procedure, when a defendant has been detained in custody or held to bail to answer a criminal accusation before the district court, "the prosecution, unless otherwise

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[1] Although oral argument was requested, this case was appropriate for review on the briefs alone. TEX. R. APP. P. 39.8.

ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information [is] not presented . . . [at] the next term of the court which is held after his commitment or admission to bail." TEX CODE CRIM. PROC. ANN. art. 32.01 (Vernon 1998). Yet, issuance of the indictment before a court adjudicates whether article 32.01 was violated moots the subject. *Tatum v. State*, 505 S.W.2d 548, 550 (Tex. Crim. App. 1974); *Holleman v. State*, 945 S.W.2d 232, 236 (Tex. App.—Amarillo 1997, no pet.); *but see Norton v. State*, 918 S.W.2d 25 (Tex. App.—Houston [14th Dist.] 1996, pet. granted) (suggesting otherwise).[2]

Here, appellant was indicted in May of 1996. However, his attempt to dismiss the indictment under article 32.01 did not occur until February of 1997. Since the indictment had issued long before any court convened to adjudicate whether the State complied with article 32.01, the dispute became moot. *Tatum v. State, supra*; *Holleman v. State, supra*. Moreover, appellant's reliance upon the Federal Speedy Trial Act, 18 U.S.C. § 3161(b) does not affect our determination for that act does not apply to state criminal prosecutions. *Kimmell v. Leoffler*, 791 S.W.2d 648, 652 (Tex. App.—San Antonio 1990, writ denied) (the federal act has no application unless there is a federal arrest); *see also United States v. Mills*, 964 F.2d 1186, 1188-90 (D.C. Cir. 1992), *cert. denied*, 506 U.S. 977 (1992).

Accordingly, we affirm the judgment.

BRIAN QUINN
Justice

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[2] We held, in *Holleman v. State*, 945 S.W.2d 232 (Tex. App.—Amarillo 1997, no pet.), that *Norton* was incorrectly decided and continue to so hold.

CCA Clerks System v 3.0- Active Files Event # 7 of 7

PDR/Case Number [98-0651] Docketed [05/01/1998]
Petitioner [APPELLANT ]
Style [JACKSON, RONALD ]
v [ ]
Offense [INTOXICATION MANSLAUGHTER ]
[ ] Type [49.08 ]
Punishment [2 YEARS ]
COA Case Number [07-97-00263-CR ] COA Opinion [AFF 2-23-98 ]
Tr Ct ID Number [320150290] Tr Ct Case # [96CR2576 ]
County [Bexar ] Court Name [290TH DISTRICT COURT ]

| Date | Proc | Event | Desc | Disposition | Oral | Loc |
|---|---|---|---|---|---|---|
| 05/01/1998 | | PDR FILED | APP | | | CLK |
| 06/04/1998 | | NO RESPONSE FILED | STA | | | BG5 |
| 07/17/1998 | | WORKUP COMPLETE | | | | MEL |
| 04/28/1999 | | PDR DISP | APP | REFUSED | | CLK |
| 05/14/1999 | | REHEAR RECEIVED | APP | | | CLK |
| 05/14/1999 | | REHEAR REJECTED | APP | | | CLK |
| 05/14/1999 | | FINAL DISP | APP | REFUSED | | COA |

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